

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of Applications of)
)
KNTV LICENSE, INC.) FCC File Nos. 0000459611, 0000459831
)
For Renewal of Private Operational Fixed)
Microwave Service Stations WNTI263 and)
WNTI264, San Jose, California)

ORDER

Adopted: November 19, 2001

Released: November 23, 2001

By the Deputy Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. On May 4, 2001, KNTV License, Inc. (KNTV) filed applications to renew its licenses to operate Private Operational Fixed Microwave Service (POFS) Stations WNTI263 and WNTI264, San Jose, California.¹ Because the licenses for the two stations expired on March 5, 2001, KNTV also requests a waiver of the Commission’s Rule² requiring licensees to seek renewal prior to the expiration of their authorizations.³ For the reasons discussed below, we grant the Waiver Request.

II. BACKGROUND

2. Stations WNTI263 and WNTI264 were licensed to KNTV in 1996 with a common expiration date of March 5, 2001. They are used to support locally originated news and public affairs programming on television broadcast Station KNTV, San Jose, California. Prior to the expiration of the licenses, KNTV interactively filed applications to renew its authorizations in the Commission’s Universal Licensing System (ULS) on February 20, 2001.⁴ On the following day, KNTV submitted a single payment remittance form (FCC Form 159), two checks in the amount of \$340.00 each, and a transmittal letter requesting that one check be associated with each application to Mass Media Services, P.O. Box 358195, Pittsburgh, Pennsylvania.⁵ The payments were never associated with the applications, and on March 13, 2001, the Public Safety and Private Wireless Division, Licensing and Technical Analysis Branch (Branch) dismissed the applications due to non-payment or insufficient payment for the applications within the

¹ See FCC File Nos. 0000459611, 0000459831 (filed May 4, 2001) (“Applications”).

² See 47 C.F.R. § 1.949(a).

³ See Applications, Exhibit A (“Waiver Request”).

⁴ See FCC File Nos. 0000373196, 0000373197 (filed Feb. 20, 2001) (“February Applications”).

⁵ See Letter from Tom W. Davidson, Esq. and Erin L. Dozier, Esq., Akin, Gump, Strauss, Hauer and Feld, LLP, to Magalie R. Salas, Secretary, FCC (filed Feb. 21, 2001). Although KNTV directed the transmittal letter to lockbox 358195, the enclosed FCC Form 159 correctly specified lockbox 358994.

required time period. Upon learning of the dismissal, KNTV contacted a member of the Branch staff, who stated that the payments had not been associated with the applications because they had been directed to the wrong lockbox.⁶

3. On March 22, 2001 KNTV filed a second set of renewal applications for Stations WNTI263 and WNTI264.⁷ On the same day, KNTV submitted a single FCC Form 159, two checks in the amount of \$340.00 each, and a transmittal letter requesting that one check be associated with each application to Wireless Bureau Applications, P.O. Box 358994, Pittsburgh, Pennsylvania.⁸ On April 10, 2001, the Branch dismissed the second set of applications for failure to submit sufficient and timely payment.

4. Upon learning of the second dismissals, KNTV contacted the FCC Call Center and was told that the payments were not processed because KNTV submitted two checks with a single FCC Form 159.⁹ On May 4, 2001, KNTV filed a third set of renewal applications.¹⁰ It also submitted a separate FCC Form 159 for each application and two checks for \$340.00 each. Those payments have been associated with the instant applications. KNTV also requested a waiver of the Commission's Rules to permit consideration of its late-filed applications to renew its prior authorizations to operate Stations WNTI263 and WNTI264.

III. DISCUSSION

5. The Commission adopted its current policy governing the disposition of late-filed renewal applications in 1999.¹¹ Pursuant to that reinstatement policy, renewal applications that are filed within thirty days of the expiration of the license will be granted *nunc pro tunc* if the application is otherwise sufficient under the Commission's Rules.¹² However, the licensee may be subject to an enforcement action for untimely filing and unauthorized operation during the time between the expiration of the license and the untimely renewal filing.¹³ Applicants who file renewal applications more than thirty days after the license expiration may also request that the license be renewed *nunc pro tunc*, but such requests will not be routinely granted, will be subject to stricter review, and also may be accompanied by enforcement action,

⁶ See Waiver Request at 2.

⁷ See FCC File Nos. 0000404171, 0000404172 (filed Mar. 22, 2001) ("March Applications").

⁸ See Letter from Tom W. Davidson, Esq. and Erin L. Dozier, Esq. Akin, Gump, Strauss, Hauer and Feld, LLP, to Magalie R. Salas, Secretary, FCC (filed Mar. 22, 2001).

⁹ See Waiver Request at 4.

¹⁰ In addition, on April 19, 2001, KNTV applied for special temporary authority (STA) to continue its present operations pending resolution of the instant matter. See FCC File Nos. 0000436871, 0000436890 (filed Apr. 19, 2001); see also FCC File Nos. 0000637934, 0000637938 (filed Oct. 23, 2001) (renewal applications for STA). As a result, KNTV remains authorized to maintain its current operations until May 1, 2002.

¹¹ Biennial Regulatory Review -- Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services, *Memorandum Opinion and Order on Reconsideration*, Docket No. 98-20, 14 FCC Rcd 11476, 11485-11486 ¶ 22 (1999) (*ULS Reconsideration MO&O*).

¹² See *id.* at 11485 ¶ 22.

¹³ See *id.*

including more significant fines or forfeitures.¹⁴ In determining whether to grant a late-filed renewal application, we take into consideration all of the facts and circumstances, including the length of the delay in filing, the reasons for the failure to timely file, the potential consequences to the public if the license should terminate, and the performance record of the licensee.¹⁵ Taking into account all the facts and circumstances of the instant matter, including the specific factors set forth by the Commission in the context of late-filed renewal applications, we grant KNTV's requested relief and reinstate its authorizations to operate Stations WNTI263 and WNTI264.

6. In particular, we find the circumstances presented by KNTV to be similar to those discussed in *Navopache Electric*.¹⁶ In that case, the licensee filed timely applications to renew its licenses prior to their expiration. Although the licensee in *Navopache Electric* submitted the correct payment amount to the appropriate lockbox at Mellon Bank,¹⁷ the staff did not associate the payment with the renewal applications because the accompanying FCC Form 159 failed to reference the application file numbers.¹⁸ As a result, the applications could not be processed and were subsequently dismissed by the Branch.¹⁹ Upon review, we concluded that waiver and reinstatement were justified in *Navopache Electric* because the timely filed renewal applications clearly demonstrated the licensee's intent to continue operating the POFS stations in compliance with the Commission's Rules and because the reasons that the applications were dismissed by the Branch were unrelated to the licensee's actual operations.²⁰

7. Similarly, we find that the reinstatement of KNTV's licenses to operate Stations WNTI263 and WNTI264 is fully warranted under the circumstances presented in the instant matter. We deem it significant that, on February 20, 2001, KNTV filed its first set of applications to renew the subject licenses nearly two weeks prior to their scheduled expiration of March 5, 2001. Like the licensee in *Navopache Electric*,²¹ KNTV's timely filed renewal applications clearly demonstrate its intent to remain authorized to operate the subject Stations in compliance with the Commission's Rules. Moreover, as in *Navopache Electric*²² the Branch dismissed KNTV's original, timely filed renewal applications for reasons unrelated to its actual operation(s) of the Stations. In fact, KNTV was simply renewing its licenses to operate Stations

¹⁴ *See id.*

¹⁵ *Id.* at 11485 ¶ 22.

¹⁶ *Navopache Electric Cooperative, Inc., Order*, 16 FCC Rcd 11870 (WTB PSPWD 2001) (*Navopache Electric*).

¹⁷ The staff at Mellon Bank generally opens the applications submitted to the Commission's lockboxes, processes and records the accompanying fees, and forwards the applications to the appropriate Commission offices for further review. Upon receipt, the Commission's staff determines whether the applications were appropriately processed at Mellon Bank and, in its discretion, returns or dismisses defective applications.

¹⁸ *See Navopache Electric*, 16 FCC Rcd at 11871 ¶ 3.

¹⁹ *See id.*

²⁰ *See id.* at 11873 ¶ 7.

²¹ *See id.*

²² *See id.* *See also, e.g., Florida Power and Light Company, Order*, 15 FCC Rcd 13607 (WTB PSPWD 2000) (*Florida Power*) (also permitting waiver and reinstatement where licensee timely-filed a renewal application that was dismissed by the Branch for reasons unrelated to the licensee's actual operations of the Station).

WNTI263 and WNTI264 without modification(s). Consistent with precedent,²³ we therefore conclude that it is appropriate to grant the relief requested by KNTV.

IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED that pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.949 of the Commission's Rules, 47 C.F.R. § 1.949, the Request for Waiver of Section 1.949(a) of the Commission's Rules filed by KNTV License, Inc. on May 4, 2001 IS GRANTED.

9. IT IS FURTHER ORDERED that the Licensing and Technical Analysis Branch SHALL PROCESS KNTV License, Inc.'s pending applications, FCC File Nos. 0000459611 and 0000459831, in accordance with this *Order* and the applicable Commission Rules.

10. These actions are taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Ramona E. Melson
Deputy Chief, Public Safety and Private Wireless Division
Wireless Telecommunications Bureau

²³ See, e.g., *Navopache Electric*, 16 FCC Rcd at 11873 ¶ 7, *Florida Power*, 15 FCC Rcd at 13609 ¶ 5; City of Henderson, Nevada, *Order*, 14 FCC Rcd 16156, 16159 ¶ 7 (WTB PSPWD 1999) (granting primary status for 2 GHz station for which licensee attempted to renew prior to expiration date); Motorola, Inc., *Order on Reconsideration*, 14 FCC Rcd 16110, 16114 ¶¶ 10-12 (WTB PSPWD 1999) (granting primary status for 2 GHz station for which timely renewal application was rejected because licensee failed to include FCC Form 159 with payment); Pacific Gas and Electric Company, *Memorandum Opinion and Order*, 14 FCC Rcd 13400, 13407-08 ¶¶ 17-20 (WTB PSPWD 1999) (affirming grant of primary status for 2 GHz station for which timely renewal application was rejected because accompanying credit card authorization could not be processed).